

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05cr46

UNITED STATES OF AMERICA)	
)	
v.)	<u>ORDER</u>
)	
CURTIS L. ARNOLD (2))	
_____)	

THIS MATTER comes before the Court on the defendant’s Motion For Relief pursuant to Rule 60(b) of the Federal Rules Of Civil Procedure. (Doc. No. 60).

The defendant claims the criminal judgment against him (Doc. No. 35) is void for lack of jurisdiction. (Doc. No. 60: Motion at 1). A defendant may not attack a criminal conviction using the rules of civil procedure. United States v. Leake, 96 Fed. Appx. 873 (4th Cir. 2004) (citing United States v. O’Keefe, 169 F.3d 281, 289 (5th Cir. 1999) and United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998)); see also United States v. Breit, 754 F.2d 526, 530 (4th Cir. 1985) (“there is no provision similar to FRCP 60(b) for relief after final judgment or order in effect for federal criminal cases”). Additionally, the Fourth Circuit has found that a civil Rule 60(b) motion in a criminal case may be dismissed as untimely if not brought within the time to file a notice of appeal following entry of the judgment. United States v. McKelver, 225 Fed. Appx. 185, 186 (4th Cir. 2007). Here, the motion was filed months after the appeal was decided.¹ Therefore, the motion must be denied.

Even if the Court were to consider the merits of the defendant’s claim under Rule 60(b), the Court would reject it. Numerous courts have considered similar claims about the alleged

¹The Fourth Circuit’s opinion was issued on May 31, 2007. (Doc. No. 58). The motion was submitted at the earliest on November 8, 2007. (Doc. No. 60 : Motion at 25).

irregularity in the enactment of 18 U.S.C. § 3231 and found them to be frivolous. See e.g. United States v. Collins, 910 F.3d 697, 698 (7th Cir. 2007); United States v. Potts, 251 Fed. Appx. 109, 111 (3d Cir. 2007); Cardenas-Celstino v. United States, 552 F. Supp. 962, 966-67 (W.D. Mo. 2008) (collecting cases).

IT IS, THEREFORE, ORDERED that the defendant's Motion for Relief (Doc. No. 60) is **DENIED**.

The Clerk is directed to send copies of this Order to the parties, including Curtis Arnold, Fed. Reg. No. 21094-058, FCI Williamsburg, P.O. Box 340, Salters, South Carolina, 29590.

Signed: August 13, 2008

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

